

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 52****[FAR Case 93-024]****RIN 9000-AG74****Federal Acquisition Regulation;
Allowable Cost and Payment Clause**

AGENCIES Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing changes to the Federal Acquisition Regulation (FAR) to clarify payment provisions for large business prime contractors which are awarded cost-type contracts. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before February 20, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments on: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 93-024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 93-024.

SUPPLEMENTARY INFORMATION:**A. Background**

The Office of Federal Procurement Policy SWAT Team on Civilian Agency Contracting in its report of December 1992, entitled "Improving Contracting Practices and Management Controls on Cost-Type Federal Contracts", recommended several FAR revisions which were viewed to have Government-wide benefit.

One area identified for clarification included the payment provisions in FAR clauses 52.216-7, Allowable Cost

and payment, and 52.232-7, Payment Under Time-and-Materials and Labor-Hour Contracts. The SWAT Team concluded that these clauses did not clearly convey the Government's intent that payments to subcontractors by large business prime contractors were not billable to the Government until the contractor had actually paid the subcontractors. The proposed rule amends these payment clauses to clarify that, on cost-type contracts, payments to subcontractors are not billable by large business prime contractors until the subcontractors have been paid by the prime contractor.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only applies to large business entities who wish to be reimbursed under cost-type contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and cite (FAR case 93-024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 15, 1995.

Edward C. Loeb,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

**PART 52—SOLICITATION PROVISIONS
AND CONTRACT CLAUSES**

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.216-7 is amended by revising the clause date and paragraph (b)(i)(iii) to read as follows:

52.216-7 Allowable cost and payment.

* * * * *

Allowable Cost and Payment (Date)

* * * * *

(b) * * *

(1) * * *

(iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Contractor's subcontractors under similar cost standards.

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3. Section 52.232-7 is amended by revising the clause date and the second sentence of paragraph (b)(2) to read as follows:

**52.232-7 Payments under time-and-
materials and labor-hour contracts.**

* * * * *

Payments Under Time-and-Materials and Labor-Hour Contracts (Date)

* * * * *

(b) * * *

(2) * * * Reimbursable costs in connection with subcontracts shall be limited to the amounts paid to the subcontractor for items and services purchased directly for the contract only when cash, checks, or other form of payment has been made for such purchased items or services; however, this requirement shall not apply to a Contractor that is a small business concern. * * *

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 44****[FAR Case 94-605]****[RIN 9000-AG75]****Federal Acquisition Regulation;
Contractors' Purchasing Systems
Reviews**

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing a revision to the Federal Acquisition Regulation (FAR) concerning requirements under Contractors' Purchasing Systems Reviews (CPSR's). This regulatory action was not subject to Office of Management and Budget review under